

**THE VBP GROUP, LLC**  
4742 North 24<sup>th</sup> Street, Suite 405  
Phoenix, Arizona 85016

Ms. Bethany Erb  
Rural Business-Cooperative  
Service, Rural Utilities Service,  
Department of Agriculture.

Dear Ms. Erb:

The VBP Group, LLC and Professor Anthony Cook appreciate the opportunity to present to the United States Department of Agriculture, Rural Development our response to the Advanced Notice of Proposed Rulemaking on the heir property issue as it affects African American farmers and homeowners. We believe that Rural Development should be commended both for its desire to address this problem and its clear description of the issue in its ANPR.

By way of background, Professor Cook is a graduate of the Yale School of Law and is a *magna cum laude* graduate of Princeton University's Woodrow Wilson School of International and Public Policy. He has completed two post-graduate fellowships at Harvard University, the first in Ethics and the Professions at the Kennedy School of Government and the second in Religion and Public Values at the Harvard School of Divinity. As a tenured, full Professor of Law at the Georgetown Law Center in Washington DC, he teaches in the areas of civil rights, constitutional and corporate law. He has substantial experience in the operation of Community Based Organization.

The VBP Group is headed by Vernon Parker. Until February 2006, Mr. Parker served as the First Assistant Secretary for Civil Rights at USDA. In that role, Mr. Parker gained first hand experience with many of the issues raised in the ANPR.

I. Need for Facilitated Rulemaking or Similar Collaborative Process

From our experiences in dealing with this issue, we are confident that Rural Development will receive numerous well reasoned and thorough comments on how to address the complex issues raised in the ANPR. As Rural Development is well aware, a resolution of the concerns raised in the

ANPR is of a tremendous importance to the individuals suffering from the historical legacy that led to the heir property problem. However, as Rural Development is also well aware, there is great potential that any resolution will face resistance from other affected parties. Accordingly, we anticipate that the comments which Rural Development will receive will express many conflicting views.

We believe that the best approach for Rural Development to take is facilitated rulemaking or a similar collaborative process. We recommend that an Advisory Committee be established with representatives from a wide cross section of stakeholders. This committee should be charged with the responsibility of negotiating the text of a proposed rule. The negotiations should be facilitated by individuals trusted by the stakeholders and with relevant substantive knowledge. The Advisory Committee should be mandated to hold a series of meetings over a specified period and to present its recommendation to Rural Development by a specified date. Experience has shown that facilitated rulemaking or similar collaborative procedures can considerably shorten the time and reduce the resources needed to promulgate regulations dealing with such a sensitive issue as heir property.

## **II. Need for Organized Effort To Clear Title**

We believe that Rural Development is correct in its description of the problems caused by "heir property" in the African American Farming Community. It is our view that, the best method for addressing this issue, would be an organized effort to obtain clear title to the land and, where appropriate, combine heir property to create a sufficient size to avoid some the problems covered in the ANPR.

The most common method of addressing some of the issues raised by the ANPR would actions to quiet title. A quiet title action is a legal proceeding in which a property claimant forces another claimant or claimants into court to establish the true ownership of the property. The effect of the court's final ruling is to literally "quiet" title to the property, eliminating clouds on title and making title marketable.

Quiet title actions are almost always matter of state law and are pursued in state courts. Therefore, any major effort to address the issues raised by the ANPR would likely have to take place in local courts across the affected states.

In addition, there may be a need to address certain issues before the legislatures of some states.

A non-legal issue that also should be investigated is the economic loss to the relevant jurisdictions caused by the difficulty in developing heir property land.

Accordingly, we are proposing that Rural Development support the creation of a consortium law school clinics (the "Consortium") whereby law students would assist affected African American Farmers be bringing quiet title actions on their behalf and, where necessary, support legislative action. The use of law school clinics to assist individuals in financial need is well established. The learning experience associated with bringing an action to quiet title fit well within the clinic model.

Our proposal would be that the participating law schools would work together (through an internet based network) in order to jointly work on projects and create a community of students, law school professors and other interested individuals who would share their advice and work product to advance the goals of the project.

One approach we would recommend that the Clinics consider pursuing would be the creation of limited liability companies to hold title to the contributed Heir Property. In other words, instead of owning the real estate directly the contributors would own the LLC. The LLC could then bring the quiet title action on its own behalf.

The LLC could own land contributed by a number of different land owners in order to increase the amount of acreage involved. Management of the LLC would be vested in the persons who contributed the land and the organization could be run like a cooperative.

In conclusion, we again want to commend Rural Development for being willing to take on this difficult and complex problem.

Sincerely,

*Vernon B. Parker*

Vernon Parker